

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/CS/HB 567a

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .194041.2

**Short Title:** Suspension of Local School Board Members

**Sponsor(s):** Representative Luciano “Lucky” Varela and Others

**Analyst:** Kevin Force

**Date:** March 12, 2013

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**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HOUSE BILL 567**

**AS AMENDED**

**The House Floor Amendment would make the district court’s review of a decision by the Secretary of Public Education to suspend a local school board member *de novo*, which is to say, the court would consider the matter before it as if hearing it for the first time.**

**Original Bill Summary:**

CS/CS/HB 567 proposes a new section of the *Public School Code* to provide for procedures for the suspension of individual local school board members from their positions on their local boards in certain circumstances:

- A local school board may investigate the conduct of a board member, and give that member an opportunity to comment, if it receives a written complaint that a board member has:
  - violated a provision of the *Public School Code*;
  - a rule promulgated pursuant to the code; or
  - an ethical standard of the local school board or the Public Education Department (PED).
- A local school board may meet in executive session to discuss the complaint, but any vote to reprimand or censure a member must be made in an open meeting.
- Rather than voting to reprimand or censure, or in addition to doing so, a local school board may vote, in a public meeting, to file a formal complaint with the Secretary of Public Education, who shall:
  - begin to investigate the complaint within 30 days; and
  - provide notice and opportunity to be heard to the school board member if, after investigation, the Secretary finds that a violation has occurred and is serious enough to warrant suspension.
- A public hearing on the suspension of a school board member must be held within the school district.

- Before rendering a decision, the Secretary must consult with the Public Education Commission.
- If the Secretary orders the suspension of a board member, the suspension will last until whichever occurs soonest:
  - the violation is corrected, pursuant to the order of suspension; or
  - the passage of three years; or
  - the final year of a member's term (except if the violation occurs or the suspension begins in the final year of the member's term).
- The suspended member may appeal the Secretary's suspension to the district court.
- When the Secretary suspends the majority of a school board, the board shall be deemed to have been suspended, and PED shall act in lieu of the school board.
- Local school boards must adopt written policies concerning:
  - procedures to address complaints about members; and
  - whether to file a formal complaint with the Secretary.

**Fiscal Impact:**

CS/CS/HB 567 does not contain an appropriation.

**Substantive Issues:**

According to the analysis of the original HB 567 submitted by PED:

- the suspension of school board members is the last resort for the Secretary when dealing with problematic situations, and it is seldom exercised;
- suspending individual members is a more desirable option than suspending an entire board, as is the case under current law, because:
  - it provides the Secretary greater flexibility than the suspension of the an entire board; and
  - under current law, responsible and able members are unnecessarily suspended as the result of the actions of others.

According to the Fiscal Impact Report of the House Education Committee Substitute of HB 567, from the Legislative Finance Committee, the New Mexico School Boards Association notes a possibility for the recall of individual school board members, via the *Local School Board Members Recall Act*, wherein<sup>1</sup>:

- citizens may petition the district court to review the case for recall;
- the court may review the case to see if sufficient facts exist to allow the continuation of the recall process; and
- if the court finds sufficient cause to continue with the recall process, a special election shall be held for that purpose.

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<sup>1</sup> Chapter 22, Article 7 NMSA 1978

### **Technical Issues:**

The Attorney General's Office notes that the language regarding the opportunity for the pertinent individual school board member to comment may be problematic because it suggests that a school board may have discretion in whether it grants the member opportunity to comment, and suggests clarifying the matter.

### **Background:**

The provision in the *Public School Code* providing for the suspension of school boards has not been amended since the adoption of substantial educational reforms in 2003. The Secretary of Public Education recently exercised this authority in the fall of 2012, when she suspended the Questa Independent School Board, citing numerous issues. The Secretary took this action on September 18, 2012. The next day, the Deputy Secretary informed the Public Education Commission of what had transpired.

After conducting the public hearing, on December 10, 2012, the Secretary of Public Education, following the recommendation of the hearing officer, ordered the continued suspension of the school board until new members could be sworn in following the February 5, 2013 elections. In explaining the decision, the Secretary noted that, among other issues:

- a preponderance of evidence indicated that the behavior of the board members exceeded the powers and duties granted to the board by state law, and encroached on the authority of the district superintendent; and
- board members' behavior violated the spirit and intent of PED's "Standards of Excellence" which require school boards to delegate administrative and supervisory functions to the local superintendent or charter school administrator, as appropriate, and refrain from involvement in the delegated activities.

### **Committee Referrals:**

HEC/HJC

### **Related Bills:**

HB 484 *School Board Member Stipend*

CS/HB 605 *School District & Community College Elections*

CS/SB 356a *Election Procedures & Process*